C.) REMARKS

This Response is filed in response to the Office Action dated June 22, 2006.

Upon entry of this Response, claims 1-20 will be pending in the Application.

In the outstanding Office Action, the Examiner rejected claims 1, 5 and 7-12 under 35 U.S.C. 102(e) as being anticipated by Petersen et al. (U.S. Patent No. 6,657,718); rejected claims 2 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Petersen et al. (U.S. Patent No. 6,657,718) in view of Wright et al. (U.S. Patent No. 5,579,107); rejected claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Petersen et al. (U.S. Patent No. 6,657,718) in view of the Examiner's Official Notice; allowed claims 14-20; and indicated claims 3 and 4 would be allowable if rewritten in independent form.

Rejection under 35 U.S.C. 102

The Examiner rejected claims 1, 5 and 7-12 under 35 U.S.C. 102(e) as being anticipated by Petersen et al. (U.S. Patent No. 6,657,718), hereinafter referred to as "Petersen."

Specifically, the Examiner stated that

> As regard to claim 1, Petersen discloses a sample chamber for a test specimen comprising of the following:
>
> a main body (16), at least one optical element (11/30/33), the at least one optical element having a surface for holding a test specimen, the at least one optical element being operatively connected to the main body by a force applied to the surface for holding the test specimen, means (9/14/15) for applying a force to a continuous portion of the surface for holding the test specimen of the at least one optical element to operatively connect the at least one optical element to the main body , the means for applying a force comprising at least one sealing element, the at least one sealing element being configured and disposed between the main body and the at least one optical element (col. 4, line 33-65) and wherein the main body, the at least one optical element and the at least one sealing element form a sample well upon the at least one optical element being operatively connected to the main body by the means for applying a force (fig. 2)(col. 4, line 40-65).

Applicants respectfully traverse the rejection of claims 1, 5 and 7-12 under 35 U.S.C. 102(e).

Petersen, as understood, is directed to a liquid measuring cell having a housing with an essentially collar-shaped top housing part and a cap-like bottom housing part, which are

connected to each other by means of housing screws and are sealed by means of an O-ring seal. In its upper region, the top housing part has a large circular opening which contains a bottom chamber part made of glass. Toward the top, the bottom chamber part rests against a radially inward protruding collar of the top housing part and is sealed in relation to it by means of another O-ring seal. A cap-shaped top chamber part is comprised of a transparent glass disk, which is inserted into an intermediary ring and serves as a measuring window, and an edge, which is curved toward the top housing part and is connected to the intermediary ring. The top chamber part is placed on the top housing part, where the edge encompasses the upper region of the top housing part and is detachably connected to it by means of a bayonet connection. The top chamber part can be easily removed from the liquid measuring cell by detaching the bayonet connection. An O-ring seal between and inwardly pointing, annular projection of the intermediary ring and the collar of the top housing part and an O-ring seal between the above-mentioned annular projection and the circumference of the glass disk are additionally provided in order to seal the liquid measuring cell. The O-ring simultaneously constitutes a clamp retention, which secures the glass disk to the intermediary ring when the top chamber part is removed.

In contrast, independent claim 1 recites a sample chamber for a test specimen, the sample chamber comprising: a main body; an optical element, the optical element having a surface for holding a test specimen, the optical element being operatively connected to the main body by a force applied to the surface for holding the test specimen; means for applying a force to a continuous portion of the surface for holding the test specimen of the optical element to operatively connect the optical element to the main body, the means for applying a force comprising at least one sealing element, the at least one sealing element being configured and disposed between the main body and the optical element; the main body, the optical element and the at least one sealing element form a sample well upon the optical element being operatively connected to the main body by the means for applying a force; and wherein the optical element being disposed to form a bottommost portion of the sample chamber.

The examiner is reminded that "'[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.' *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051,

1053 (Fed. Cir. 1987)." *See* Manual of Patent Examining Procedure, 8th Edition, Revision 4 (MPEP), Section 2131.

In addition, "'[t]he identical invention must be shown in as complete detail as is contained in the ... claim.' *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989)." *See* MPEP, Section 2131.

Several of the features recited by Applicant in independent claim 1 are not taught or suggested by Petersen. First, Petersen does not teach or suggest the optical element being disposed to form a bottommost portion of the sample chamber as recited by Applicant in independent claim 1. As clearly shown in Figure 2 of Petersen, the glass disk (11) is inserted into the intermediary ring (12) of the top chamber part (10). As such, the glass disk (11) is in the top half of the chamber and cannot be the bottommost component. Furthermore, assuming the device in Petersen could be inverted, which Applicant does not admit, the glass disk (11) still would not be the bottommost component because intermediary ring (12) and/or the top chamber part (10) that holds the glass disk (11) would be the bottommost part of the chamber.

Next, Petersen does not teach or suggest means for applying a force to a continuous portion of the surface for holding the test specimen of the optical element to operatively connect the optical element to the main body as recited by Applicant in independent claim 1. In Petersen, the top chamber part (10) is connected to the top housing part (1) by a bayonet connection. *See* Petersen, col. 4, lines 44-50. As such, no force is applied to a continuous portion of the glass disk (11) to connect the glass disk (11) to the top housing part (1). Furthermore, the O-ring seal (14) that holds the glass disk (11) in the intermediary ring (12) applies a force to the edges or circumference of the glass disk (11) and not the surface of the glass disk that forms the chamber.

Thus, since Petersen does not teach or suggest all of the limitations recited in independent claim 1, Applicant respectfully submits that Petersen does not anticipate Applicant's invention as recited in independent claim 1.

Therefore, for the reasons given above, independent claim 1 is believed to be distinguishable from Petersen and therefore are not anticipated nor rendered obvious by Petersen.

Dependent claims 5 and 7-12 are believed to be allowable as depending from what is believed to be an allowable independent claim 1 for the reasons given above. In addition, claims

5 and 7-12 recite further limitations that distinguish over the applied art. In conclusion, it is respectfully submitted that claims 1, 5 and 7-12 are not anticipated nor rendered obvious by Petersen and are therefore allowable.

Rejection under 35 U.S.C. 103

A. Rejection of Claims 2 and 6

The Examiner rejected claims 2 and 6 under 35 U.S.C. § 103(a) as being unpatentable over Petersen in view of Wright et al. (U.S. Patent No. 5,579,107), hereafter referred to as "Wright."

Applicants respectfully traverse the rejection of claims 2 and 6 under 35 U.S.C. § 103(a).

Petersen is directed to a liquid measuring cell as discussed in greater detail above.

Wright, as understood, is directed to a dry particle analyzer.

Applicant submits that claims 2 and 6 are distinguishable from Petersen and/or Wright for at least the following reasons. To begin, claims 2 and 6 are believed to be distinguishable from Petersen and/or Wright as depending from what is believed to be an allowable independent claim 1 as discussed above. Furthermore, there is nothing in Wright that teaches or suggests any of the limitations in independent claim 1 not taught or suggested by Petersen.

Therefore, in view of the above, claims 2 and 6 are believed to be distinguishable from Petersen and/or Wright and therefore are not anticipated nor rendered obvious by Petersen and/or Wright. In addition, claims 2 and 6 recite further limitations that distinguish over the applied art. In conclusion, it is respectfully submitted that claims 2 and 6 are not anticipated nor rendered obvious by Petersen and/or Wright and are therefore allowable.

B. Rejection of Claim 13

The Examiner rejected claim 13under 35 U.S.C. § 103(a) as being unpatentable over Petersen in view of the Examiner's Official Notice.

Applicants respectfully traverse the rejection of claim 13 under 35 U.S.C. § 103(a).

Petersen is directed to a liquid measuring cell as discussed in greater detail above.

The Examiner's Official Notice, as understood, is directed to the use of an adhesive ring for sealing as being well known in the art.

Applicant submits that claim 13 is distinguishable from Petersen and/or the Examiner's Official Notice for at least the following reasons. To begin, claim 13 is believed to be distinguishable from Petersen and/or the Examiner's Official Notice as depending from what is believed to be an allowable independent claim 1 as discussed above. Furthermore, there is nothing in the Examiner's Official Notice that teaches or suggests any of the limitations in independent claim 1 not taught or suggested by Petersen.

Therefore, in view of the above, claim 13 is believed to be distinguishable from Petersen and/or the Examiner's Official Notice and therefore are not anticipated nor rendered obvious by Petersen and/or the Examiner's Official Notice. In conclusion, it is respectfully submitted that claim 13 is not anticipated nor rendered obvious by Petersen and/or the Examiner's Official Notice and are therefore allowable.

Allowable Subject Matter

The Examiner indicated that claims 14-20 are allowed. The Examiner further objected to claims 3 and 4 as being dependent upon a rejected base claim, but indicated that the claims would be allowable, if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant appreciates the Examiner's indication of allowable subject matter, but believes that all of the claims are allowable for the reasons given above.

CONCLUSION

In view of the above, Applicant respectfully requests reconsideration of the Application and withdrawal of the outstanding objections and rejections. As a result of the amendments and remarks presented herein, Applicant respectfully submits that claims 1-20 are not anticipated by nor rendered obvious by Petersen, Wright, the Examiner's Official Notice or their combination and thus, are in condition for allowance. As the claims are not anticipated by nor rendered obvious in view of the applied art, Applicant requests allowance of claims 1-20 in a timely manner. If the Examiner believes that prosecution of this Application could be expedited by a telephone conference, the Examiner is encouraged to contact the Applicant.

The Commissioner is hereby authorized to charge any additional fees and credit any overpayments to Deposit Account No. 50-1059.

Respectfully submitted,
McNEES, WALLACE & NURICK

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By

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Dated: September 20, 2006